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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE TERMINATION OF THE PARENTAL RIGHTS OF I.C. and J.F.,	)	
MELONIE COOPER,	)	
Appellant,	)	
vs.	)	No. 26A05-0701-JV-00055
GIBSON COUNTY DEPARTMENT OF CHILD SERVICS,	)	
Appellee.	)	

APPEAL FROM THE GIBSON CIRCUIT COURT
The Honorable Walter H. Palmer, Judge
Cause Nos. 26C01-0508-JT-0005 and 26C01-0508-JT-0006

December 17, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Melonee C. ("Mother") appeals the termination of her parental rights to her children I.C. and J.F.C. in Gibson Circuit Court. Concluding that the trial court's judgment terminating Mother's parental rights is not clearly erroneous, we affirm.

Facts and Procedural History

Mother is the biological mother of I.C., born on March 19, 2001, and J.F.C., born on June 23, 2003. Mother's initial involvement with the Gibson County Department of Child Services ("GCDCS") began in April 2001, when I.C. was two weeks old. The GCDCS was contacted by hospital officials because Mother repeatedly brought I.C. back to the hospital, expressing concerns that I.C. was not eating and that I.C. was spitting up excessively. However, I.C. was examined by Dr. Wilson and found to be fine. The nurses fed I.C., and she did not spit up. Dr. Wilson observed that Mother did not seem to have patience with the baby and needed to be taught skills for baby care. Consequently, when the hospital discharged I.C., a referral to Home Health was made, but Mother did not keep the appointment. A referral to Healthy Families was made, but Mother refused those services as well.

In September and October of 2001, Mother signed a Voluntary Service Contract Agreement stating that she would participate in an intensive home-based program. The providers later withdrew services due to Mother's threat to inflict bodily harm on the providers' personnel. On January 24, 2002, mother entered into an Informal Adjustment after GCDCS received a report that Mother left then ten-month-old I.C. in the bathtub while she left the family residence. An unknown friend came into the residence and removed I.C. from the bathtub until Mother could be found. In December 2002, I.C. was

removed from Mother's care and placed in foster care due to Mother exhibiting verbal suicidal ideation and Mother admitting herself to the psychiatric unit at Deaconess Hospital. On December 26, 2002, Mother entered into an Informal Adjustment with the GCDCS.

On June 23, 2003, Mother gave birth to J.F.C. The next day, GCDCS was notified that Mother tested positive for methamphetamine and that she had admitted to hospital staff that she had used methamphetamine and marijuana prior to delivery. J.F.C. also tested positive for amphetamine. The GCDCS also had concerns for I.C. because of Mother's continued use of illegal drugs, her total noncompliance with the Informal Adjustments and Voluntary Service Agreements, and reports that Mother had been verbally abusive to I.C. and had been observed handling I.C. roughly.

On June 30, 2003, GCDCS filed a child in need of services ("CHINS") petition on both children. At the initial hearing, the court found the children to be CHINS and set the cause for a dispositional hearing. The GCDCS filed its dispositional report on August 11, 2003. This report identified several problems including: (1) that Mother was a single parent who was undereducated and underemployed; (2) that Mother had a history of illegal drug use, of refusing counseling, and of general non-compliance with the GCDCS; (3) that the GCDCS felt Mother cooperated just enough to keep the GCDCS from removing her children, but not enough to make positive changes in her or her children's lives; (4) that Mother was very opinionated, had difficulty accepting assistance, and was rude and verbally aggressive to anyone with whom she disagreed; and, (5) that even though Mother was maintaining a home and providing for the basic needs of the children

at the time of the dispositional hearing, she became easily frustrated and had been observed roughly jerking I.C. and being verbally abusive toward I.C. by yelling at her and calling her unkind names.

On August 21, 2003, the GCDCS filed an addendum to the dispositional report. In its new report, the GCDCS expressed new concerns over Mother's recent behavior and recommended Mother complete a psychological evaluation as soon as possible, and that Mother complete psychological counseling if such was recommended. Mother agreed to these recommendations and the parties filed an Agreed Order with the court on September 5, 2003.

On December 12, 2003, the GCDCS filed its periodic review hearing report wherein it stated that Mother had recently been more cooperative with the GCDCS in its desire to provide services regarding the necessity of a safe, drug free home for Mother and her children. Consequently, the Family Care Manager recommended that the Court dismiss wardship, with Mother continuing to work with the GCDCS. On December 16, 2003, the trial court held a review hearing and dismissed wardship of both children. At that time, Mother agreed to continue to work with the GCDCS on a Voluntary Service Referral Agreement for up to six months.

Seven months later, on July 16, 2004, Princeton Police Officers contacted the GCDCS. The police had been called to Mother's residence on reports that Mother was passed out, possibly intoxicated, with her two small children unattended and three-year-old I.C. outside the apartment in the parking lot. When police officers arrived at Mother's home, she was belligerent, staggering and unsteady on her feet. The police

officers determined that Mother was intoxicated and arrested her for public intoxication and two counts of neglect of a dependent. The children were placed in foster care.

The GCDCS filed its CHINS petition on July 23, 2004. Mother was released from jail in late November 2004, and started visiting with the children on a twice-weekly basis. Mother initially refused services to help her find employment. On January 6, 2005, the trial court held a review hearing where it ordered the foster care placement to continue and set a review hearing for May 6, 2005.

In its Permanency Hearing Report filed on May 2, 2005, the GCDCS identified several problem areas including, but not limited to: (1) Mother's extensive history of illegal drug use, (2) Mother's poor work record, lack of permanent residence and inability to provide for herself or her children financially on a long term basis without the assistance of others, (3) her almost four year history of general non-compliance with the GCDCS and her history of trying to intimidate service providers, and (5) Mother's failure to keep counseling appointments. The GCDCS filed its petition to terminate parental rights on August 22, 2005. The termination trial commenced on February 16, 2006. The second day of trial was held on March 13, 2006,[1] and the third day of trial began on April 18, 2006 and was continued on June 16, 2006. The trial court issued its judgment

[1] On this second day of trial, the trial court granted the GCDCS's request to dismiss its petition to terminate J.F.C.'s father's parental rights. Thus, J.F.C.'s father is not a party to this appeal. I.C.'s father is unknown.

terminating mother's parental rights to I.C. and J.F.C. on December 7, 2006. This appeal ensued.[2]

Standard of Review

This court has long had a highly deferential standard of review in cases concerning the termination of parental rights. In re K.S., 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). Thus, when reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. In re D.D., 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), trans. denied. We consider only the evidence and reasonable inferences that are most favorable to the judgment. Id.

Here, the trial court made specific findings in granting the termination of Mother's parental rights. Where the trial court enters specific findings of fact, we must first determine whether the evidence supports the findings, and second we determine whether the findings support the judgment. Bester v. Lake County Office of Family of Children, 839 N.E.2d 143, 147 (Ind. 2005). We will set aside the trial court's judgment terminating parental rights only if it is clearly erroneous. Id. A finding is clearly erroneous when there are no facts or inferences drawn therefrom that support it. In re D.D., 804 N.E.2d at

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[2] We note that on April 18, 2007, this Court issued an order dismissing this appeal because Mother failed to timely file a Notice of Appeal pursuant to Indiana Appelate Rule 9(A)(1)&(5) (stating that a party initiating an appeal must file a Notice of Appeal within thirty days after entry of the final judgment or the appeal shall be forfeited). However, our Supreme Court granted transfer, and remanded the cause for our review on the merits. In so doing, the Supreme Court stated in its order:

> Under almost all circumstances, the failure to file a timely notice of appeal results in forfeiture of the right to appeal. *See* App.R.9(A)(5). This Court finds that [Mother] has not forfeited her right to appeal under these extraordinary circumstances, which involve the combination of this being an appeal of an order terminating her parental rights and her detrimental reliance upon the trial court's erroneous granting of an extension of time to file her notice of appeal when no extension was available.

M.C. v. State, Cause No. 26S05-0707-JV-296 (Ind. July 26, 2007).

264. A judgment is clearly erroneous only if the findings do not support the trial court's conclusions or the conclusions do not support the judgment thereon. Quillen v. Quillen, 671 N.E.2d 98, 102 (Ind. 1996).

Discussion and Decision

The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. Bester, 839 N.E.2d at 147. A parent's interest in the care, custody, and control of his or her children is perhaps the oldest of our fundamental liberty interests. Id. However, these parental interests are not absolute and must be subordinated to the child's interests when determining the proper disposition of a petition to terminate parental rights. In re M.B., 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), trans. denied. Thus, parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. In re K.S., 750 N.E.2d at 836.

In order to terminate a parent-child relationship, the State is required to allege and prove that:

> (A) [o]ne (1) of the following exists:
>
> > (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
>
> * * *
>
> (B) there is a reasonable probability that:
>
> > (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or

(ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b) (1998). The State must establish each of these allegations by clear and convincing evidence. Egly v. Blackford County Dep.'t of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992).

Mother does not challenge the trial court's finding that the children had been removed for more than six months under a dispositional decree. Nor was there a dispute regarding whether the GCDCS had a satisfactory plan for the care and treatment of I.C. and J.F.C., in that said plan was adoption. See In re A.N.J., 690 N.E.2d 716, 722 (Ind. Ct. App. 1997) (concluding that when parental rights are terminated adoption is a satisfactory plan for the care and treatment of the child). Rather, Mother asserts that the GCDCS failed to prove by clear and convincing evidence that there was a reasonable probability that the conditions that resulted in the children's removal from her care would not be remedied.[3] Specifically, Mother asserts that she had taken "substantial steps in improving her life and the quality of life for her and her children" by the time of the

[3] Mother's brief also contains a single statement alluding to the fact that the GCDCS "failed to meet the statutory requirements that indicate that termination is in the best interest of the child." See Br. of Appellant at 5. However, Mother's assertion is supported by neither cogent argument nor citation to authority. Indiana Appellate Rule 46(A)(8) states that "[t]he argument must contain contentions of the appellant on the issues presented supported by cogent reasoning. Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on appeal relied on." Id. Mother's argument is therefore waived, and we limit our review to the single issue of whether the GCDCF proved by clear and convincing evidence that the reasons for the children's removal from Mother's care were unlikely to be remedied. See Davis v. State, 835 N.E.2d 1102, 1113 (Ind. Ct. App. 2005) (concluding that failure to present a cogent argument or citation to authority constitutes waiver of issue for appellate review), trans. denied.

termination proceeding and that "overwhelming evidence at trial clearly indicated that the problems that the [GCDCS] was concerned about were remedied" and thus the trial court's ruling is erroneous and contrary to the weight of the evidence. Br. of Appellant at 4-5.

Mother correctly points out that when determining whether a reasonable probability exists that the conditions justifying a child's removal and continued placement outside the home will not be remedied, the trial court must judge a parent's fitness to care for his or her children at the time of the termination hearing and take into consideration evidence of changed conditions. In re J.T., 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), trans. denied. However, the court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." Id.

The evidence most favorable to the judgment reveals that at the time of the termination hearing, Mother was still not participating in court ordered counseling. Additionally, Case Manager Nancy Harper testified that Mother had difficulty spending time with the children during visitation and would oftentimes get stressed out, or become tired and frustrated after only an hour of visitation with the children requiring her visitation to be cut short. Harper also testified that she felt that Mother was still unable to provide for the children on a regular basis.

The record further reveals that Mother failed to pay court ordered child support in the amount of $40.00 per week for the entire eighteen months that the children were in foster care. While Mother had recently enrolled in school at the time of the termination

hearing, she did not have a job. When asked how she planned to feed her children if they were released to her, she responded, "Oh, there is different programs for that." Tr. Vol. 2, p.14. Finally, Mother failed to establish a permanent home throughout the duration of the termination proceedings, living with various friends and in homeless shelters, until just three weeks prior to trial when she finally obtained an apartment. This evidence does not support Mother's assertions on appeal that she had "taken any and all measures necessary to remedy the problems that were identified by the [GCDCS]." Br. of Appellant at 5.

With regard to Mother's habitual pattern of conduct, namely, her unwillingness to participate in services offered by the GCDCS and inability to provide a safe and stable home environment for the children, free from illegal drug use, the trial court made several pertinent findings of fact, including but not limited to the following:

Findings of Fact and Conclusions of Law

* * *

> 3. [GCDCS] has a long and extensive history with these children and their parents. This case is made more difficult by the fact that both parents are intelligent people. However, they simply are unable to parent these children, or at least cannot do so for more than a very short period of time. In addition, both parents seem to know how to 'play the system,' in the sense of delay by means of successively asking for continuances that cannot be denied, going along with services being offered just long enough to have the matter dismissed or delayed and so forth.
>
> 4. [GCDCS] first became involved with these children on April 2, 2001, when [I.C.] was two weeks old. . . . When the hospital discharged [I.C.], a referral to Home Health was made but Mother did not keep the appointment. Additionally, a referral to Healthy Families was made but Mother refused those services as well.

In September and October 2001, Mother signed a Voluntary Service Contract Agreement stating she would participate in an intensive Home-Based program through Doulos Ministry and Lincoln Hills. The providers later withdrew the services due to Mother's threat to inflict bodily harm upon the providers' personnel.

On January 24, 2002, Mother entered into an Informal Adjustment when [GCDCS] received a report of neglect of [I.C.]. Mother had left ten-month old [I.C.] in the bathtub while she left the family's residency. . . . Mother agreed to Intensive Case Management Services. . . .

On December 2002, [GCDCS] removed [I.C.], then a 21-month-old infant, from her Mother's care and placed her in foster care due to Mother exhibiting verbal suicidal ideation and Mother admitting herself into a psychiatric unit at Deaconess Hospital.

* * *

6. As stated previously, Mother gave birth to [J.F.C.] on June 23, 2003. [GCDCS] received a call from St. Mary's Hospital on June 24, 2003, advising that Mother tested positive for methamphetamine and had admitted to hospital staff that she had used methamphetamine and marijuana prior to delivery. Newborn [J.F.C.] also tested positive at birth for amphetamines. [GCDCS] also had concerns for the newborn and his older sister, [I.C.], due to Mother's history of total non-compliance with the Informal Adjustments and Voluntary Service Agreements, her continued use of illegal drugs, and her continued association with others who used illegal drugs. Mother had also been seen handling [I.C.] roughly and being verbally abusive towards her. For several months, Mother also refused to go to WIC to receive basic necessities for [I.C.].

* * *

18. The Court held a review hearing on December 16, 2003. . . . The court dismissed wardship of both children . . . . Mother agreed to continue to work with [GCDCS] on a Voluntary Service Referral Agreement for up to six months.

19. On July 19, 2004, Princeton Police Officers contacted [GCDCS]. Said officers were called to Mother's residence on reports that Mother was passed out, possibly intoxicated, with her two small children unattended. . . . Police arrested Mother on two counts of neglect of a dependent and public intoxication; the children were placed in foster care.

* * *

33. * * *

To determine whether parental rights of [Mother] should be terminated requires a determination of whether we will accept the extreme minimal parenting such as this mother will provide . . . . But here, we are dealing with an at least average intelligence parent, who skates along the bare edge of doing just enough to keep her children, but only a very small part of the time. She can, and has, as the record abundantly reflects, do just enough to keep [GCDCS] at bay. But once they are out of her sight (and concern), she reverts to type and the children suffer.

Observation of [Mother] in the Courtroom during trial is telling. One witness, Tom Holtzworth, P.hD., testified that his opinion was that [Mother] suffers from a [m]ood disorder that affects every part of her daily activities including parenting. Untreated, he feels she cannot parent.[2] He further opined that this condition will not go away. He called her interaction narcissistic.

Narcissistic certainly defines what this observer saw in the [c]ourtroom. The entirety of the evidence in this case establishes unequivocally that [Mother] cares about these children, <u>but only as a reflection of herself</u>.

34. There is a reasonable probability that conditions that resulted in the removal and continued placement of the children outside of the home will not be remedied. Again, the evidence conclusively establishes [Mother] cannot or will not do anything to keep her children, other than for the very short term.

35. That continuation of the parent-child relationship poses a significant threat to the well-being of the children. The children here must be paramount. This has gone on long enough to see the pattern will not be remedied.

* * *

37. Juanita Working, guardian ad litem for the children, vehemently recommends termination of Mother's parental rights.

38. CASA for the children, Thelma Russell, strongly recommends termination of Mother's parental rights.

[2] Again, as the record reflects, [Mother] will not participate in treatment.

Br. of Appellant at 14-20.

The record is replete with evidence that Mother has serious emotional problems, poor parenting skills, and an unwillingness to cooperate with service providers. A pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, supports a finding that there exists no reasonable probability that the conditions will change. Lang v. Starke County Office of Family and Children, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), trans. denied.

Under the facts and circumstances before us, we conclude that the GCDCS presented clear and convincing evidence that the conditions that led to the removal of I.C. and J.F.C. from Mother's care would not change. Moreover, we are unwilling to put I.C. and J.F.C. on a shelf until Mother is willing and capable of caring for them. More than five years without improvement is long enough. See In re Campbell, 534 N.E.2d 273, 275 (Ind. Ct. App. 1989) (holding that the Welfare Department "does not have to rule out any possibility of change" but just has to show that there is a reasonable probability that the parent's behavior will not change).

For all these reasons, we conclude that the trial court's judgment terminating Mother's parental rights to I.C. and J.F.C. is not clearly erroneous.

Affirmed.

NAJAM, J., and BRADFORD, J., concur.